



BILLING ADDRESS CODE 3510-JE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Intent to Develop a Policy for Determining Harmful Algal Bloom (HAB) and Hypoxia Events of National Significance in Marine or Coastal Waters; Opportunity to Provide Information

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; Request for comments.

SUMMARY:

The Harmful Algal Bloom and Hypoxia Research and Control Amendments Act of 2017 (HABHRCA) provides NOAA with authority to determine that a harmful algal bloom (HAB) or hypoxia event in marine or coastal waters is an event of national significance. NOAA may make this determination on its own initiative or upon the request of the Governor of an affected state. Following an event of national significance determination, NOAA is further authorized to make sums available to the affected state or local government for the purposes of assessing and mitigating the detrimental environmental, economic, subsistence use, and public health effects of the event of national significance. Funds would be subject to the availability of appropriations. The Federal share of the cost of any activity carried out for the purposes described above may not exceed 50 percent of the cost of that activity. NOAA is soliciting comments to inform the development of agency policy for determining HAB and hypoxia events of national significance in marine and coastal waters. NOAA will subsequently issue, in the Federal Register, notice of availability of the draft policy and provide an opportunity for formal public comment on the draft policy after it is prepared. Note that HABHRCA provides the United States Environmental Protection Agency (EPA) with comparable authority for determining freshwater hypoxia

or HAB events of national significance. The EPA will issue a separate notice to solicit comments on freshwater hypoxia or HAB events.

DATES:

Comments must be received on or before Monday, September 9, 2019.

ADDRESSES: You may submit information by any of the following methods:

- *Electronic Submission:* Public comments can be submitted electronically either through the National Centers for Coastal Ocean Science webpage (<https://coastalscience.noaa.gov/>).
- *Email:* You may submit comments via email to nccos.eventsofsignificance@noaa.gov. Please indicate “HAB and hypoxia event of national significance” in the email subject line.
- *Mail:* Submit all written comments to Caitlin Gould at NOAA, National Centers for Coastal Ocean Science, SSMC-4, Rm. #8237, 1305 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope “HAB and hypoxia event of national significance.”
- *Instructions:* Comments must be submitted by one of the above methods to ensure that the information is received, documented, and considered by NOAA. Comments sent by any other method, or received after the comment period, may not be considered by NOAA. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Maggie Broadwater at (843) 460-9684.

SUPPLEMENTARY INFORMATION:

HAB and hypoxic events are some of the most scientifically complex and economically damaging coastal issues challenging our ability to safeguard the health of our nation's coastal ecosystems. Almost every state now experiences some kind of HAB event, and the number of hypoxic water bodies in the United States has increased over the last century. Recent economic analyses show effects costing hundreds of millions of dollars. Even just one major HAB or hypoxia event can incur tens of millions of dollars to local coastal economies, indicating that the nationwide economic impacts are likely much larger.

In 1998, Congress recognized the severity of these threats and passed the Harmful Algal Bloom and Hypoxia Research and Control Act (HABHRCA 1998; Public Law 105-383). The Harmful Algal Bloom and Hypoxia Research and Control Amendments Act of 2004 (HABHRCA 2004, Public Law 108-456) and 2014 (HABHRCA 2014, Public Law 113-124) reaffirmed and expanded the mandate for NOAA to advance the scientific understanding and ability to detect, monitor, assess, and predict HAB and hypoxia events. Congress most recently reauthorized and amended HABHRCA through the National Integrated Drought Information System Reauthorization Act of 2018 (Public Law 115-423). Section 9 of this Act, cited as the Harmful Algal Bloom and Hypoxia Research and Control Amendments Act of 2017, provides NOAA and the U.S. Environmental Protection Agency with independent authority to make a determination of "HABs and hypoxia events of national significance." Following such a determination, federal officials may "make sums available to the affected State or local government for the purposes of assessing and mitigating the detrimental environmental, economic, subsistence use, and public health effects of the event of national significance." Funds would be subject to the availability of appropriations. This notice focuses only on the authority granted to NOAA and provides interested parties with an opportunity to provide information early in the policy development process for determining HAB and hypoxia events of national significance in marine or coastal waters.

Factors to be considered in making a determination include the toxicity of the HAB, severity of hypoxia, potential for spread, economic impact, relative size in relation to the past five occurrences, and the geographic scope. NOAA is accepting comments to inform the development of guidance for assessing these considerations and whether additional factors should be considered. The determination process optimally will include quantitative and qualitative means of assessment. In particular, NOAA is interested in the following topics:

- The approach that NOAA should use to quantify and qualify the factors identified in the reauthorization of HABHRCA to determine an event of national significance.
 - How NOAA should define and weigh the following statutory parameters:
 - Toxicity of the HAB and severity of hypoxia;
 - Economic impact;
 - Relative size in relation to the past five occurrences of HAB or hypoxia events; that occur on a recurrent or annual basis;
 - Geographic scope, including the potential to spread and affect either a single jurisdiction or multiple municipalities, states, or countries.
 - Based on the statutory parameters above, how should NOAA define significant detrimental environmental, economic, subsistence use, and public health effects and what thresholds should be considered in making a determination.
 - Whether NOAA should consider developing additional criteria, and, if so, how NOAA should quantify or qualify these additional criteria. For example:
 - How NOAA should define an hypoxia event, and whether hypoxia should be defined relative to a set value or specific to an organism, a place, or time;
 - Whether NOAA should consider inclusion of the duration of an event;

- Whether NOAA should consider the level of public concern and, if so, how to measure that.
- For the parameters described above, the information that a state should provide when requesting a determination and/or funds.
- For the purposes of a determination, and possible assessments and/or mitigation funds, how NOAA should define A) the start and end of an event; and B) the geographic extent of the event. Relative to these definitions, whether and how NOAA should establish the point at which states can/may make a funding request for assessment and mitigation assistance.
- For an event that has affected more than one state or shows the potential to do so in the case of an on-going event, whether NOAA should:
 - make a single determination for an event applicable to all states affected at the time of a determination and any future states affected by the event via geographic expansion, movement, or intensification of the event, or;
 - limit determinations to the area requested by a State based on the then-current location and geographic extent of the event. This alternative could result in multiple state-by-state determinations for a single event.
- How to define subsistence use.
- The definition of the 50% federal/state match, and what contributions may be considered.

To ensure clarity, NOAA requests separate comments for HAB and hypoxia events as it is likely that the factors for each will be considered differently. For more details and background, please refer to this site: <https://coastalscience.noaa.gov/>.

Authority: 33 U.S.C. 4001 *et seq.*

Steven Thur,

Director,

National Centers for Coastal Ocean Science,

National Ocean Service,

National Oceanic and Atmospheric Administration.

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